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## **PUBLIC RELEASE OF INVESTIGATIVE REPORT CITY OF ELKO May 2, 2001**

### **I. INTRODUCTION**

The mission of the Special Investigations Division is to review allegations of malfeasance, misfeasance, or nonfeasance by local government employees or officers. Since the Division is a fact-finding entity and has no prosecutorial powers, its role is to evaluate allegations brought to this Office's attention and, when appropriate, provide specialized auditing techniques, initiate an independent investigation, or refer the matter to appropriate oversight authorities.

The Special Investigations Division of the Office of the State Auditor (hereinafter "OSA") received notification regarding potential wrong-doing by a former Clerk-Treasurer and a City Council Member of the City of Elko (hereinafter "City"). The former Mayor of the City, Joseph Rubbelke (hereinafter "Mayor Rubbelke"), requested that the Scott County Attorney's Office conduct an independent investigation into the allegations of wrong-doing. In turn, the Scott County Attorney's Office requested the OSA to investigate this matter. This Investigative Report contains the OSA's findings.

The allegations against Clerk-Treasurer Mary Ellen Flicek<sup>1</sup> (hereinafter "Clerk-Treasurer Flicek") and Council Member Linda Borgen<sup>2</sup> (hereinafter "Council Member Borgen") stem from the City's 1999 independent audit conducted by the CPA firm of Kern, DeWenter, Viere, Ltd. During the 1999 audit, it was discovered that several utility accounts had remained delinquent for a number of years. This finding was included in the "Memorandum on Accounting Policies, Procedures and Internal Controls," which was a portion of the City of Elko audit report dated April 18, 2000 (hereinafter "Audit Report").

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<sup>1</sup> Clerk-Treasurer Flicek was hired by the City in 1977. She was the City's Clerk-Treasurer for approximately 23 years.

<sup>2</sup> Council Member Borgen has been a member of the City Council since 1995. Her term expires on December 31, 2002.

Following the receipt of the Audit Report, Clerk-Treasurer Flicek presented it to the City Council during a joint City Council and Planning Commission work session on June 27, 2000. Clerk-Treasurer Flicek informed the City Council that the City had five delinquent utility accounts with a total delinquent balance of approximately \$13,000. Clerk-Treasurer Flicek and Council Member Borgen each admitted that their utility accounts were among the five that were delinquent. According to information contained in a handwritten City ledger, as of July 1, 2000, Clerk-Treasurer Flicek had a delinquent utility account balance of \$9,712.18 and Council Member Borgen had a delinquent utility account balance of \$2,911.56. From 1991 through 1999, neither Clerk-Treasurer Flicek nor Council Member Borgen had their delinquent utility accounts certified to the County Auditor for payment with property taxes.

At a July 5, 2000 City Council meeting, the City Council suspended Clerk-Treasurer Flicek with pay. At a City Council meeting held on July 19, 2000, Clerk-Treasurer Flicek tendered her resignation to the City Council. No disciplinary action was taken by the City against City Council Member Borgen.<sup>3</sup>

The OSA was informed by a City attorney that as of September 5, 2000, Council Member Borgen's delinquent account balance had been paid in full. In addition, a City attorney informed the OSA that as of October 23, 2000, Clerk-Treasurer Flicek had also paid in full the delinquent amount that she owed the City.

## **II. CERTIFICATION OF DELINQUENT ACCOUNTS TO THE COUNTY AUDITOR**

Minnesota law grants municipalities the authority to certify unpaid water and sewer charges to the county auditor for collection with property taxes.<sup>4</sup> Each year Clerk-Treasurer Flicek prepared and presented a resolution to the City Council that included, among other things, the names of City residents with delinquent utility balances and the delinquent amount owed by each. The OSA was informed by Ms. Carolyn Miller, the City's current Mayor<sup>5</sup> and a City Council member since 1996 (hereinafter "Council Member Miller"),

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<sup>3</sup> It was determined by a City attorney that the City Council does not have management jurisdiction over other elected City officials.

<sup>4</sup> Minn. Stat. § 444.075, subd. 3 (2000). In accordance with this statute, the City passed an ordinance regarding City water service. Elko, MN, Ordinance No. 11 (Jan. 28, 1970).

<sup>5</sup> Council Member Miller defeated former Clerk-Treasurer Flicek in the November 2000 election. Mayor Rubbelke did not run for re-election.

that it was her understanding that not all delinquent accounts were certified each year, and that Clerk-Treasurer Flicek would not include a person on the list if the person made an effort to pay their utility bill.<sup>6</sup>

However, according to Mayor Rubbelke (mayor from 1999 to 2000), he had believed that *all* of the City's delinquent utility accounts were certified to the County Auditor each year. Since the allegations against Clerk-Treasurer Flicek and Council Member Borgenarose, Mayor Rubbelke stated he learned for the first time that Clerk-Treasurer Flicek allowed some individuals to pay their yearly utility balance in one payment during the course of the year.<sup>7</sup> He stated that it was his belief that all accounts, not paid in full by the certification deadline, were then certified to the County Auditor.<sup>8</sup>

The OSA received and reviewed the resolutions that Clerk-Treasurer Flicek prepared and presented to the City Council from 1991 through 1999. In each year, Clerk-Treasurer Flicek's and Council Member Borgen's delinquent accounts were omitted from the resolution. Consequently, neither utility account was certified to the County Auditor during these years.

### **III. DELINQUENT UTILITY ACCOUNT BALANCES**

The OSA received and reviewed a handwritten City ledger containing information regarding water and sewer service for portions of 1998, all of 1999, and part of 2000. Specifically, the handwritten ledger contained the following information:

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<sup>6</sup> Council Member Miller also told the OSA that she did not know the specific criteria used by Clerk-Treasurer Flicek in determining which delinquent accounts were certified each year. However, according to Council Member Miller, Clerk-Treasurer Flicek likely violated her own criteria by not certifying her own delinquent account to the County Auditor.

<sup>7</sup> The City was not able to provide the OSA with documentation that would allow the OSA to determine the number of accounts handled in this manner. This practice appears to violate Ordinance No. 11, Section 17, which provides, in relevant part: "Bills for water service shall be payable in advance on the first day of each month and may be paid without penalty until the 10<sup>th</sup> day of each month."

<sup>8</sup> The deadline for a city to certify the proposed property tax levy for property taxes payable in the following year is September 15. Minn. Stat. § 275.065, subd. 1(a) (2000).

- Names of the utility account owners;
- Number of gallons of water used per month by each household;
- Monthly charges assessed by the City to each utility account for water and sewer service;<sup>9</sup>
- Payments received by the City and posted to each utility account; and
- Remaining balance, if any.

The OSA also received and reviewed accounts receivable reports for the years 1990 through 1999 that were prepared by the City.<sup>10</sup> Each of these reports contains the delinquent account balances of City residents for water, garbage and sewer service and is dated December 31. The OSA reviewed the above documentation in order to determine the delinquent amounts owed by Clerk-Treasurer Flicek and Council Member Borgen for water, sewer and garbage service.<sup>11</sup>

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<sup>9</sup> Charges were based, in part, upon monthly water meter readings. However, Ordinance No. 11, Section 20 states: “There shall be no meters and the rates established shall be a flat monthly charge.” Mayor Rubbelke informed the OSA that this provision is simply outdated. According to the current Clerk-Treasurer, the City is in the process of revising Ordinance No. 11.

<sup>10</sup> The OSA obtained the accounts receivable reports from Kern, DeWenter, Viere, Ltd. A CPA at the firm, indicated that the reports for 1998 and 1999 were prepared by Clerk-Treasurer Flicek. The handwriting for the reports from 1990 through 1997 appears similar to the handwriting in the 1998 and 1999 reports, but the OSA was unable to verify that these reports were prepared by Clerk-Treasurer Flicek.

<sup>11</sup> Clerk-Treasurer Flicek’s account is listed in the handwritten ledger under the name Francis Flicek. Council Member Borgen’s account is listed in the handwritten ledger under the name Donald Borgen. The OSA was informed by the City’s current Clerk-Treasurer that Francis Flicek and Donald Borgen are the respective spouses of Clerk-Treasurer Flicek and Council Member Borgen. The OSA provided the Scott County Attorney with a listing of all delinquent utility account balances of \$200.00 or more for each year (1990 through 1999) according to the accounts receivable reports.

**A. Clerk-Treasurer Flicek**

Based upon the handwritten City records, the following chart shows the delinquent utility amounts owed by Clerk-Treasurer Flicek as of December 31 for the years 1990 through 1999.<sup>12</sup>

<u>Year</u>	<u>Water</u>	<u>Garbage</u>	<u>Sewer</u>	<u>Balance</u>
<b>1990</b>	\$259.56	\$692.35	\$1,095.81	\$2,047.72
<b>1991</b>	\$413.76	\$861.10	\$1,513.60	\$2,788.46
<b>1992</b>	\$544.88	\$915.10	\$1,983.99	\$3,443.97
<b>1993</b>	\$799.10	\$969.10	\$2,500.00 <sup>13</sup>	\$4,268.20
<b>1994</b>	\$1,251.27	\$1,041.10	\$3,151.72	\$5,444.09
<b>1995</b>	\$1,670.19	\$1,095.10	\$3,743.74	\$6,509.03
<b>1996</b>	\$2,060.11	\$1,149.10 <sup>14</sup>	\$4,260.41	\$7,469.62
<b>1997</b>	\$2,473.03	\$1,197.18	\$4,827.32	\$8,497.53
<b>1998</b>	\$2,750.63	\$1,197.18	\$5,606.08	\$9,553.89
<b>1999</b>	\$2,899.30	\$1,197.18	\$5,752.78	\$9,849.26

It is evident from the above chart that Clerk-Treasurer Flicek's utility account was delinquent since at least 1990. Despite this fact, since 1991, Clerk-Treasurer Flicek omitted her delinquent utility account from the resolutions that she prepared and presented to the City Council.<sup>15</sup>

Prior to 1998, the OSA was not provided with City ledgers identifying payments that were posted to any utility account. However, due to the increase in Clerk-Treasurer Flicek's delinquent balance each year, it is apparent that few, if any, payments were made to Clerk-Treasurer Flicek's delinquent balance from 1990 through 1998. The first payment listed in the available handwritten ledger was posted to Clerk-Treasurer Flicek's account following the completion of the Audit Report in April of 2000. More

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<sup>12</sup> It appears that the balance outstanding for each year is carried forward to the next year.

<sup>13</sup> This figure was barely legible, however, it appeared to be at least the amount reflected above.

<sup>14</sup> Mayor Rubbelke informed the OSA that the City stopped providing garbage service to City residents in late 1996 or early 1997.

<sup>15</sup> The City was unable to provide the OSA with any resolutions that may have been prepared prior to 1991.

specifically, a water payment in the amount of \$250.00 was posted to Clerk-Treasurer Flicek's account on May 24, 2000. In addition, a sewer payment in the amount of \$50.00 was posted to the account on June 26, 2000, one day prior to the date Clerk-Treasurer Flicek presented the Audit Report to the City Council and revealed, for the first time, that her utility account was "very large."

According to a City attorney, by October 23, 2000, Clerk-Treasurer Flicek had paid in full the delinquent amount that she owed to the City. Based upon information contained in a computer generated accounts receivable report provided to the OSA by the City, the following is a list of payments that were posted to Clerk-Treasurer Flicek's utility account between June 27, 2000 and October 23, 2000:<sup>16</sup>

- July 14, 2000                      \$75.00
- July 26, 2000                      \$150.00
- September 14, 2000              \$9,250.00
- September 20, 2000              \$250.00
- September 27, 2000              \$100.00

**B. Council Member Borgen**

Based upon the handwritten City records, the following chart shows the delinquent utility amounts owed by Council Member Borgen as of December 31 for the years 1990 through 1999.<sup>17</sup>

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<sup>16</sup> The computer generated accounts receivable report does not reconcile with the handwritten City ledger. It also appears that the amount posted to Clerk-Treasurer Flicek's utility account did not include penalties, as authorized by Ordinance No. 11, or interest. Ordinance No. 11, Section 17 provides: "[a] penalty of twenty-five (25¢) shall be added to each bill not paid on or before the 10<sup>th</sup> of the month." However, the OSA found no evidence that this provision was ever utilized by the City, and Council Member Miller told the OSA that she did not believe late fees have ever been charged to any delinquent account.

<sup>17</sup> It appears that the balance outstanding for each year is carried forward to the next year.

<u>Year</u>	<u>Water</u>	<u>Garbage</u>	<u>Sewer</u>	<u>Balance</u>
<b>1990</b>	\$23.80	\$33.75	\$623.01	\$680.56
<b>1991</b>	\$161.20	\$202.50	\$1,154.14	\$1,517.84
<b>1992</b>	\$63.12	\$18.00	\$1,349.42	\$1,430.54
<b>1993</b>	\$272.23 <sup>18</sup>	\$108.00	\$1,800.13 <sup>19</sup>	\$2,180.36
<b>1994</b>	\$524.37	\$180.00	\$2,353.81	\$3,058.18
<b>1995</b>	\$592.68	\$0.00	\$2,153.34	\$2,746.02
<b>1996</b>	\$1,020.26	\$90.00	\$2,626.32	\$3,736.58
<b>1997</b>	\$1,067.78	\$0.00	\$3,071.87	\$4,139.65
<b>1998</b>	\$191.96	\$0.00	\$2,875.06	\$3,067.02
<b>1999</b>	\$178.13	\$0.00	\$2,986.55	\$3,164.68 <sup>20</sup>

Council Member Borgen became a City Council member in 1995. From 1991 through 1999, Council Member Borgen's delinquent utility account was omitted from the resolutions that Clerk-Treasurer Flicek prepared and presented to the City Council. From 1995 through 1999, Council Member Borgen was present at the City Council meetings during which the delinquent utility account resolutions were passed on an unanimous vote. In addition, the OSA noted the following:

- The motion to pass the 1996 resolution was seconded by Council Member Borgen;
- The name Linda Borgen appears on the face of the 1998 resolution as a signature during which time Council Member Borgen was the acting mayor; and
- Council Member Borgen made the motion to pass the 1999 resolution.

The OSA was not provided with City ledgers identifying payments that were posted to Council Member Borgen's utility account prior to November of 1998. Therefore, it was not possible for the OSA to

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<sup>18</sup> This figure was barely legible, however, it appeared to be the amount reflected above.

<sup>19</sup> This figure was barely legible, however, it appeared to be at least the amount reflected above.

<sup>20</sup> The handwritten ledger lists a balance of \$3,164.69 which appears to be overstated by \$.01. It appears that this was the result of either an error in transcription or an error in arithmetic by the City.

determine the amount paid by Council Member Borgen for utilities from 1990 through October of 1998. From November 1998 through December 1999, \$285.00 in water payments and \$120.00 in sewer payments were posted to Council Member Borgen's account. Moreover, according to entries in the handwritten ledger, from January through June of 2000, payments totaling \$450.00 for sewer service and \$100.00 for water service were posted to Council Member Borgen's account. As of July 1, 2000, Council Member Borgen had a delinquent utility account balance of \$2,911.56.

According to a City attorney, as of September 5, 2000, Council Member Borgen's delinquent utility account had been paid in full. According to entries in the handwritten ledger, the following is a list of the payments that were posted to Council Member Borgen's utility account following her June 27, 2000 admission to the City Council:

- July 1, 2000 \$575.00
- August 29, 2000 \$50.00
- August 29, 2000 \$2,286.56
- September 5, 2000<sup>21</sup> \$50.00

### C. Other Uncertified Delinquent Accounts

The OSA provided the Scott County Attorney with a listing that reflects the City's utility account balances of \$200.00 or more for 1990 through 1999, as recorded on the handwritten accounts receivable reports obtained by the OSA from Kern, DeWenter, Viere, Ltd. The OSA discovered that there were seven utility accounts that had delinquent balances during any one of these years of \$1,000.00 or greater that were not certified to the County Auditor. The OSA determined that one of the seven utility accounts belonged to Clerk-Treasurer Flicek's son, Dan Flicek, and two of the seven utility accounts belonged to the former Mayor's husband, Wayne Benci.<sup>22</sup> These accounts are itemized below.

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<sup>21</sup> As of September 5, 2000, Council Member Borgen's account is listed in the handwritten ledger as being overpaid by \$1.84. The computer generated accounts receivable report begins on July 31, 2000, and does not reflect the delinquent balance or the remainder of the payments posted to Council Member Borgen's account reflected above, except for the \$50.00 payment posted on September 5, 2000.

<sup>22</sup> Jean Benci was the City's mayor from 1987 through 1998.

• Dan Flicek	1994	\$1,784.21
	1993	\$1,686.78 <sup>23</sup>
	1992	\$1,109.53
	1991	\$805.97 <sup>24</sup>
• Wayne Benci	1997	\$4,259.08
	1996	\$3,240.21
	1995	\$1,678.82
	1994	\$1,304.58
	1993	\$254.83 <sup>25</sup>
	1991	\$365.36
• Benci Machine Shop	1997	\$1,763.26
	1996	\$1,252.83
	1995	\$417.61
	1994	\$1,045.69
	1991	\$282.05

#### IV. JUNE 27, 2000 CITY COUNCIL WORK SESSION

Clerk-Treasurer Flicek received the Audit Report on behalf of the City and presented it to the City Council at a joint City Council and Planning Commission work session on June 27, 2000. The meeting minutes for this date show that Clerk-Treasurer Flicek stated that she believed that Kern, DeWenter, Viere, Ltd. was going to verify that she gave the Audit Report to the City Council. At this joint work session, Clerk-Treasurer Flicek admitted that her utility account was delinquent, and that she had not certified her delinquent account balance to the County Auditor in accordance with City policy.

With respect to the City's policy of certifying the delinquent utility accounts to the County Auditor each year, the following dialogue took place between Clerk-Treasurer Flicek and Mayor Rubbelke at the June 27, 2000 City Council work session:

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<sup>23</sup> This figure was barely legible, however, it appeared to be at least the amount reflected above.

<sup>24</sup> This figure was barely legible, however, it appeared to be the amount reflected above.

<sup>25</sup> This figure was barely legible, however, it appeared to be the amount reflected above.

- Mayor Rubbelke:*                      *Wait a minute. Let me ask this question because apparently I do not understand how this is happening. It was explained to me when I asked how people were carrying over their water bills in such large amounts, I was told that it was being assessed to their property. We have not been assessing it on an annual basis to be paid back with taxes?*
- Clerk-Treasurer Flicek*              *Yes. . . . it is all on their taxes . . .*
- Mayor Rubbelke:*                      *OK. What about yours then. Tell me about how that happens.*
- Clerk-Treasurer Flicek:*              *I just did not pay it. I did not follow the rules.*
- Mayor Rubbelke:*                      *What about when the taxes showed up.*
- Clerk-Treasurer Flicek:*              *No, I did not put it on the taxes. That's what I am saying. OK?*<sup>26</sup>

Subsequent to this exchange, Council Member Borgen admitted that her account was one of the five accounts and that she had been “paying on it every month.”

## **V. OSA INVESTIGATION**

Minnesota law requires all cities to “make and preserve all records necessary to a full and accurate knowledge of their official activities.”<sup>27</sup> Minnesota has adopted a general schedule for the retention and destruction of a variety of city records. Cities may destroy certain records without state approval after

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<sup>26</sup> In a letter dated July 11, 2000, addressed to Mayor Rubbelke, a CPA at Kern, DeWenter, Viere, Ltd., indicated that Clerk-Treasurer Flicek told him during the 1999 audit that the City had never considered assessing delinquent utilities to the tax rolls. Clerk-Treasurer Flicek allegedly stated that the City has never had a problem collecting delinquent utilities. When asked about her personal delinquent utility bills, Clerk-Treasurer Flicek allegedly stated that she was working out a payment plan with the City Council.

<sup>27</sup> Minn. Stat. § 15.17, subd. 1 (2000).

keeping them for the prescribed time if the city prepares a general records retention schedule under the authority of Minn. Stat. § 138.17. A city that has not established a program for the destruction of records must receive approval from the records disposition panel before disposing of any public records.<sup>28</sup> It appears that the City of Elko has not established such a record retention program.

During the course of its investigation, the OSA requested numerous records from the City. For example, the OSA made requests for City ledgers prepared prior to 1998, as well as utility billing statements and water meter readings. According to the general records retention schedule, these records should have been retained. The current City Clerk-Treasurer informed the OSA that she believed the records did at one time exist but she was not able to locate them. The OSA was unable to determine whether these records were improperly preserved or whether they had been destroyed.

## **VI. CONCLUSION**

This matter was referred to the Scott County Attorney to institute such proceedings as the law and public interest require. The OSA remained available to assist the Scott County Attorney.

*/s/ Judith H. Dutcher*  
Judith H. Dutcher  
State Auditor

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<sup>28</sup> Minn. Stat. § 138.225 (2000).